

NORTH CAROLINA GENERAL ASSEMBLY



JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON UNEMPLOYMENT INSURANCE

REPORT TO THE 2016 SESSION of the 2015 GENERAL ASSEMBLY OF NORTH CAROLINA

APRIL, 2016

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TRANSMITTAL LETTER

April 6, 2016

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TO THE MEMBERS OF THE 2016 REGULAR SESSION
OF THE 2015 GENERAL ASSEMBLY

The **JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON
UNEMPLOYMENT INSURANCE**, respectfully submits the following report to the
2016 Regular Session of the 2015 General Assembly.

Sen. Bob Rucho (Co-Chair)

Rep. Julia Howard (Co-Chair)

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COMMITTEE PROCEEDINGS

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The Joint Legislative Oversight Committee on Unemployment Insurance met three times after the 2015 Regular Session. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library. The Committee's agendas appear in Appendix D of this Report.

The Committee was created by S.L. 2013-2 (House Bill 4) effective July 1, 2013. The Committee's authorization is Article 12R of Chapter 120 of the General Statutes. A copy of Article 12R appears in Appendix B of this Report. Appendix A lists the current membership of the Committee.

During the past four years, the Committee has focused on educating the Committee's membership on the unemployment insurance (UI) program, monitoring the administration of the State's UI program, monitoring the implementation of UI law changes, and reviewing developing issues for the UI system.

The Committee learned that the UI Trust Fund held cash reserves and no longer had a debt balance. The UI Trust Fund holds over \$1 billion on reserve at the US Treasury available to pay UI claims.

The Committee heard presentations to update the Committee on program integrity efforts focusing on using the resources of the Government Data Analytics Center (GDAC) to identify UI fraud. The Committee reviewed the UI Report on Program

Integrity for the fourth quarter of 2015. The Report was a requirement added by S.L. 2015-238 (Senate Bill 15).

The UI program is administered by the Department of Commerce's Division of Employment Security (DES). Unemployed individuals also receive services from the Department of Commerce's Division of Workforce Solutions (DWS). DWS performs the Employability Assessment Interview (EAI) on behalf of DES within the first few weeks of each UI claim to interview UI claimants in person. The Committee heard a presentation by DWS reviewing its services.

The State's UI system provides an independent appellate review of disputes between employers and employees on UI claims through the Board of Review (BOR). S.L. 2015-238 directed the General Assembly's Program Evaluation Division (PED) to study the value of the Board of Review. The Committee heard PED present its Report. The PED Report found that elimination of the Board of Review would not result in any General Fund savings and that both the function and the Board of Review provide benefits. The PED Report contains recommendations to improve the function of the Board of Review.

The Division of Employment Security (DES) requested the Committee consider two technical changes: (1) clarify G.S. 96-11.7(c) that treats a new employer as the same employer as an existing business enterprise if a continuity of control exists between the businesses and (2) clarify G.S. 96-4(q) to make clear the Board of Review has the authority to independently select a hearing officer. G.S. 96-11.7(c) prevents businesses from reorganizing into a new business to avoid higher UI taxes due to past layoffs, a practice called "SUTA dumping." The Committee voted at its final meeting to

recommend these two law changes. The Legislative Proposal and a Summary of the Proposal appear in Appendix C of this Report.

FINDINGS AND RECOMMENDATIONS

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The Joint Legislative Oversight Committee on Unemployment Insurance makes the following findings and recommendations to the 2016 Regular Session of the 2015 General Assembly.

FINDINGS:

The Committee finds that:

1. Some businesses engage in the practice of "SUTA dumping" where the business attempts to acquire a new UI tax account and avoid a higher UI tax rate based on the business' history of UI claims. The business should pay the UI rate based on the tax rate corresponding to the claim experience of the business.

2. The Board of Review should have the authority to independently select a hearing officer.

3. The Department of Commerce's Division of Employment Security (DES) requested the Committee recommend two law changes to clarify the unemployment insurance laws on "SUTA dumping" and the authority of the Board of Review to independently select a hearing officer.

4. The General Assembly's Program Evaluation Division (PED) studied the Board of Review and made the following recommendations in its Report No. 2016-03 "Opportunities Exist to Increase the Accountability and Independence of the Board of Review": the General Assembly transfer staff from Department of Commerce's Division of Employment Security (DES) to the Board; direct the Board to develop policies and procedures; and direct DES to work with the Board to track and collect necessary data.

RECOMMENDATIONS:

The Committee recommends that:

1. The General Assembly enact legislation to implement the recommendations of PED Report No. 2016-03.

2. Passage of the Legislative Proposal in Appendix C of this Report with the following long title:

AN ACT TO MAKE TECHNICAL, ADMINISTRATIVE, AND CLARIFYING
CHANGES TO THE UNEMPLOYMENT INSURANCE LAWS AS

RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE
ON UNEMPLOYMENT INSURANCE.

COMMITTEE MEMBERSHIP

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2015-2016

President Pro Tempore of the Senate
Appointments:

Sen. Bob Rucho (Co-Chair)

Sen. John Alexander
Sen. Robert Clark
Sen. Wesley Meredith

Speaker of the House of Representatives
Appointments:

Rep. Julia Howard (Co-Chair)

Rep. Harry Warren (Vice-Chair)
Rep. Paul Tine (Advisory Member)
Rep. Dean Arp
Rep. Dana Bumgardner

COMMITTEE CHARGE/STATUTORY AUTHORITY

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Article 12R.

Joint Legislative Oversight Committee on Unemployment Insurance.

§ 120-70.155. (Expires July 1, 2023) Creation and membership.

(a) The Joint Legislative Oversight Committee on Unemployment Insurance is established. The Committee consists of eight members appointed as follows:

- (1) Four members of the House of Representatives appointed by the Speaker of the House of Representatives.
- (2) Four members of the Senate appointed by the President Pro Tempore of the Senate.

(b) The members serve for a term of two years. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee. A member continues to serve until a successor is appointed. A vacancy shall be filled by the officer who made the original appointment. (2013-2, s. 10; 2013-224, s. 19.)

§ 120-70.156. (Expires July 1, 2023) Purpose and powers of Committee.

(a) Purpose. – The Joint Legislative Oversight Committee on Unemployment Insurance is directed to study and review all unemployment insurance matters, workforce development programs, and reemployment assistance efforts of the State. The following duties and powers, which are enumerated by way of illustration, shall be liberally construed to provide maximum review by the Committee of these matters:

- (1) Study the unemployment insurance laws of North Carolina and the administration of those laws.
- (2) Review the State's unemployment insurance laws to determine which laws need clarification, technical amendment, repeal, or other change to make the laws concise, intelligible, and easy to administer.
- (3) Monitor the payment of the debt owed by the Unemployment Trust Fund to the federal government.
- (4) Review and determine the adequacy of the balances in the Unemployment Trust Fund and the Unemployment Insurance Reserve Fund.
- (5) Study the workforce development programs and reemployment assistance efforts of the Division of Workforce Solutions of the Department of Commerce.
- (6) Call upon the Department of Commerce to cooperate with it in the study of the unemployment insurance laws and the workforce development efforts of the State.

(b) The Committee may report its findings and recommendations to any regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee. (2013-2, s. 10; 2013-224, s. 19.)

§ 120-70.157. (Expires July 1, 2023) Organization of Committee.

The Speaker of the House of Representatives shall designate one representative as cochair, and the President Pro Tempore of the Senate shall designate one senator as cochair. The Joint Legislative Oversight Committee on Unemployment Insurance may meet upon the joint call of the cochairs. A quorum of the Committee is five members.

The Committee may meet in the Legislative Building or the Legislative Office Building. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. The House of Representatives and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Committee, and the expenses relating to the clerical employees shall be borne by the Committee. The Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. Members of the Committee shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate. (2013-2, s. 10; 2013-224, s. 19.)

§ 120-70.158. (Expires July 1, 2023) Sunset.

This Article expires July 1, 2023. (2013-2, s. 10; 2013-224, s. 19.)

LEGISLATIVE PROPOSALS

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**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

H

D

HOUSE BILL DRH40531-TMxz-12C (02/16)

Short Title: Unemployment Insurance Technical Changes.

(Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED
AN ACT TO MAKE TECHNICAL, ADMINISTRATIVE, AND CLARIFYING
CHANGES TO THE UNEMPLOYMENT INSURANCE LAWS, AS
RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE
ON UNEMPLOYMENT INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-11.7(c) reads as rewritten:

"(c) ~~Employer Number. — A new employer shall not be assigned a discrete employer number when there is an acquisition or change in the form or organization of an existing business enterprise, or severable portion thereof, and there is a continuity of control of the business enterprise. That new employer shall continue to be the same employer for the purposes of this Chapter as before the acquisition or change in form. The following assumptions apply in this subsection:~~Continuity of Control. — Any new employer that has continuity of control with an existing business enterprise shall continue to be the same employer as the existing business enterprise for the purposes of this Chapter as before the existence of the new employer. The Division shall assign any new employer with continuity of control to the account of the existing business enterprise. Any new employer with continuity of control shall not request or maintain an account with the Division other than the account of the existing business enterprise. If a new employer receives a new account and the Division subsequently finds that such new employer has continuity of control with an existing business enterprise, the Division shall recalculate the annual tax rates based on the combined annual account balances of the new employer and the existing business enterprise.

- (1) ~~"Control of the business enterprise" may occur by means of ownership of the organization conducting the business enterprise, ownership of assets necessary to conduct the business enterprise, security arrangements or lease arrangements covering assets necessary to conduct the business enterprise, or a contract when the ownership, stated arrangements, or contract provide for or allow direction of the internal affairs or conduct of the business enterprise.~~
- (2) ~~A "continuity of control" will exist.~~ Continuity of control exists if one or more persons, entities, or other organizations controlling the business enterprise remain in control of the ~~business enterprise after an acquisition or change in form. Evidence of continuity of control includes changes of an individual proprietorship to a corporation, partnership, limited liability company, association, or estate; a partnership to an individual proprietorship, corporation, limited liability company, association, estate, or the addition, deletion, or change of partners; a limited liability company to an individual proprietorship, partnership, corporation, association, estate, or to another limited liability company; a corporation to an individual proprietorship, partnership, limited liability company, association, estate, or to another corporation or from any form to another form.~~ new employer. Control may occur by means of ownership of the organization conducting the business enterprise, ownership of assets necessary to conduct the business enterprise, security arrangements or lease arrangements covering assets necessary to conduct the business enterprise, or a contract when the ownership, stated arrangements, or contract provide for or allow direction of the internal affairs or conduct of the business enterprise. Control is not affected by changes in the form of a business enterprise, reorganization of a business enterprise, or expansion of a business enterprise."

SECTION 2. G.S. 96-4(q) reads as rewritten:

"(q) The Board of Review after due notice shall have the right and power to hold and conduct hearings for the purpose of determining the rights, status and liabilities of an employer. The Board of Review shall have the power and authority to determine any and all questions and issues of fact or questions of law that may arise under the Employment Security Law that may affect the rights, liabilities and status of an employer including the right to determine the amount of contributions, if any, which may be due the Division by any employer. Hearings may be before the Board of Review and shall be held in the central office of the Board of Review or at any other designated place within the State. They shall be open to the public and shall consist of a review of the evidence taken by a hearing officer designated by the Board of Review and a determination of the law applicable to that evidence. The Board of Review shall have the power to provide for the taking of evidence by a hearing officer employed in the capacity of an attorney by the Department. Such hearing officer shall have the same power to issue subpoenas, administer oaths, conduct hearings and take evidence as is possessed by the Board of Review and such hearings shall be recorded, and he shall transmit all testimony and records of such hearings to the Board for its determination. All such hearings conducted

by such hearing officer shall be scheduled and held in any county in this State in which the employer resides, maintains a place of business, or conducts business; however, the Board of Review may require additional testimony at any hearings held by it at its office. From all decisions or determinations made by the Board of Review, any party affected thereby shall be entitled to an appeal to the superior court. Before a party shall be allowed to appeal, the party shall within 10 days after notice of such decision or determination, file with the Board of Review exceptions to the decision or the determination, which exceptions will state the grounds of objection to the decision or determination. If any one of the exceptions shall be overruled then the party may appeal from the order overruling the exceptions, and shall, within 10 days after the decision overruling the exceptions, give notice of his appeal. When an exception is made to the facts as found by the Board of Review, the appeal shall be to the superior court in term time but the decision or determination of the Board of Review upon such review in the superior court shall be conclusive and binding as to all questions of fact supported by any competent evidence. When an exception is made to any rulings of law, as determined by the Board of Review, the appeal shall be to the judge of the superior court at chambers. The party appealing shall, within 10 days after the notice of appeal has been served, file with the Board of Review exceptions to the decision or determination overruling the exception which statement shall assign the errors complained of and the grounds of the appeal. Upon the filing of such statement the Board of Review shall, within 30 days, transmit all the papers and evidence considered by it, together with the assignments of errors filed by the appellant to a judge of the superior court holding court or residing in some district in which such appellant either resides, maintains a place of business or conducts business, or, unless the appellant objects after being given reasonable opportunity to object, to a judge of the Superior Court of Wake County: Provided, however, the 30-day period specified herein may be extended by agreement of parties."

SECTION 3. This act is effective when it becomes law.



Bill Draft 2015-TMxz-12C: Unemployment Insurance Technical Changes.

2015-2016 General Assembly

Committee:	Joint Legislative Oversight Committee on Unemployment Insurance	Date:	April 6, 2016
Introduced by:		Prepared by:	Greg Roney
Analysis of:	2015-TMxz-12C		Committee Counsel

SUMMARY: *The Bill Draft makes 2 technical changes to the unemployment insurance laws as follows:*

- *Section 1 clarifies G.S. 96-11.7(c) that treats a new employer as the same employer as an existing business enterprise if a continuity of control exists between the businesses.*
- *Section 2 amends G.S. 96-4(q) by adding the phrase "have the power to" to clarify that the Board of Review has the authority to independently select a hearing officer.*

The Department of Commerce's Division of Employment Security (DES) requested both changes.

CURRENT LAW: G.S. 96-11.7(c) prohibits a new employer being assigned an employer number for unemployment insurance reporting when there is an acquisition or change in the form or organization of an existing business enterprise and there is a continuity of control of the business enterprise. Control occurs when ownership overlaps, ownership of assets overlap, or authority to direct internal affairs or conduct of the business overlap.

G.S. 96-4(q) authorizes the Board of Review to "provide for the taking of evidence by a hearing officer employed in the capacity of an attorney by the Department."

BILL ANALYSIS:

Section 1 clarifies G.S. 96-11.7(c) that treats a new employer as the same employer as an existing business enterprise if a continuity of control exists between the businesses.

Section 2 amends G.S. 96-4(q) by adding the phrase "have the power to" to clarify that the Board of Review has the authority to independently select a hearing officer in the following sentence: "The Board of Review shall have the power to provide for the taking of evidence by a hearing officer employed in the capacity of an attorney by the Department."

BACKGROUND: G.S. 96-11.7(c) prevents businesses from reorganizing into a new business to avoid higher UI taxes due to past layoffs, a practice called "SUTA dumping."

EFFECTIVE DATE: The Bill Draft is effective when it becomes law.

SUPPORTING DOCUMENTATION

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AGENDA
JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON UNEMPLOYMENT
INSURANCE

Rep. Dean Arp Sen. Bob Rucho
Wednesday, February 3, 2016
Room 544, Legislative Office Building
9:30 a.m.

- I. Call to Order
- II. Introduction of the Unemployment Insurance Program
Greg Roney, UI Team, Legislative Analysis Division, NCGA
- III. State of the Division of Employment Security: Update of Claims Processing, Technology Improvements, and Integrated Service Delivery with the Division of Workforce Solutions
Ted Brinn, Interim Assistant Secretary, Division of Employment Security, Department of Commerce
- IV. Update on Unemployment Insurance Trust Fund Balance
Kevin Carlson, Chief Financial Officer, Division of Employment Security, Department of Commerce
- V. Update on Program Integrity Efforts
 - A. Third Party Audits and Findings from 2015
Lisa Outlaw, Director of Internal Audit & Quality Control, Division of Employment Security, Department of Commerce
 - B. Partnership between GDAC and DES
John Correllus, Director, Government Data Analytics Center, Office of Information Technology Services, Department of Administration
 - C. Overview of GDAC Report
Margaret Streater, Benefits Integrity Manager, Division of Employment Security, Department of Commerce
- VI. DES Administrative and Clarifying Changes
Ted Brinn, Interim Assistant Secretary, Division of Employment Security, Department of Commerce
- VII. Adjournment

AGENDA
JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON UNEMPLOYMENT
INSURANCE

Rep. Julia Howard Sen. Bob Rucho
Wednesday, March 2, 2016
Room 544, Legislative Office Building
9:30 a.m.

- I. Call to Order
- II. Adoption of the Minutes from the February 3, 2016, Meeting
- III. Overview of the Division of Workforce Solutions, Department of Commerce
Will Collins, Assistant Secretary, DWS
Catherine Moga Bryant, Deputy Assistant Secretary, DWS
- IV. PED Report 2016-3: Opportunities Exist to Increase the Accountability and
Independence of the Board of Review
Kiernan McGorty, JD, PhD, Principal Program Evaluator,
Program Evaluation Division, NCGA
- V. Bill Draft on Items Requested by DES from February Meeting
Greg Roney, Senior Legislative Analyst, Legislative Analysis Division, NCGA
- VI. Adjournment

AGENDA
JOINT LEGISLATIVE OVERSIGHT COMMITTEE
ON UNEMPLOYMENT INSURANCE

Rep. Julia Howard Sen. Bob Rucho

Wednesday, April 6, 2016

Room 544, Legislative Office Building

9:30 a.m.

- I. Call to Order
- II. Adoption of the Minutes from the March 2, 2016, Meeting
- III. Employment Trends in North Carolina
Mike Walden, Ph.D., William Neal Reynolds Distinguished Professor, Department of
Agriculture and Resource Economics, NCSU
- IV. Executive Order 83: Employee and Employer Fairness Initiative
Bradley Hicks, Employee Classification Section, Industrial Commission
- V. Bill Draft: Unemployment Insurance Technical Changes
Greg Roney, Legislative Analysis Division, NCGA
- VI. Review and Adoption of Committee Report
- VII. Adjournment